IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1520 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ALIBHAI ISABHAI CHAUHAN

Versus

ANILBHAI VAGHJIBHAI MORABIYA

Appearance:

1. Civil Revision Application No. 1520 of 2001

MR RR TRIVEDI for Petitioner No. 1-5

MR BHAVESH P TRIVEDI for Petitioner No. 1-5

MS SEJAL K MANDAVIA for Respondent No. 1-5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/08/2002

ORAL JUDGEMENT

The petitioners herein are the original plaintiffs before the learned Civil Judge (J.D.), Jetpur in Regular Civil Suit No.157 of 2000 . They had prayed for a permanent injunction preventing the respondents

herein from dispossessing the petitioners in respect of the suit plot situated at Kanakiya plot area, Jetpur, Rajkot District. In the said suit, the defendants therein submitted an application Exh. 14 for a mandatory injunction directing the present petitioners to remove the goods lying in the suit plot. After hearing the parties, the learned Civil Judge passed an order dated 25th May, 2001, directing the present petitioners to remove the goods within the time stipulated in the order. The trial court also directed the petitioners not to cause any obstruction to the respondents in respect of the suit plot. The present petitioners felt aggrieved by the said order of the trial court and, therefore, preferred Civil Misc.Appeal No.36/2001 before the 5th Extra Assistant Judge at Gondal, District Rajkot, who heard the parties and dismissed the said appeal of the present petitioners, by judgment and order dated 29.11.2001. Feeling aggrieved by the said two judgments and orders of the two courts below, the petitioners herein have preferred this revision application under section 115 of the Code of Civil Procedure, 1908. It has been mainly cotnended here that the petitioners herein will be dispossessed during the pendency of the suit which was filed by the petitioners themselves, if the aforesaid orders passed by the two courts below are allowed to continue and are allowed to be operated and, therefore, it has been contended that the orders passed by the two courts below are illegal and deserve to be set aside.

2. Rule was issued and Ms. Sejal Mandavia, learned Advocate, appears for the respondents in response to the service of rule.

I have heard Mr R R Trivedi, learned advocate for the petitioners and Ms. Hema Joshi, Learned advocate who appears for Ms. Sejal Mandavia and perused the papers. A preliminary objection which is required to be raised is that the provisions contained in Section 115 of the CPC has been recently amended and it has been put to force w.e.f. 1.7.2002. Sub-clause (i) of sub-section (2) of section 32 of the amending Act of 1999 makes it clear that only the revisions which have been disposed of prior to 1.7.2002, have been saved; meaning thereby, rest of the revision application will be governed by the new Code of Civil Procedure as amended by the Amending Act aof 1999 which has come into force w.e.f. 1.7.2002. If we go through the provisions contained in Section 115 of the Code, as it stands after its amendment, it is very clear that the said section can be divided into two parts. Sub-section (i) of section 115 of the Code, as amended by

the Amending Act of 1999, may be applied to a matter which has been finally disposed of against which an appeal is not provided. In he present case, we find that the present revision application has been filed against the judgement and order passed by the learned Assistant Judge in Civil Misc.Appeal which was filed before him under Order 43 of the Code. The said appeal had gone to that Court from an order of the learned Civil Judge on an application under Order 39 of the said Code. Therefore, the decision is on an interim application. Even the District Court has also decided the matter wherein the order will be operative during the pendency of the suit before the trial court. An application and an order thereon filed under Order 39 of the Code has no independent existence or entity which is a part of the proceeding of the suit. In other words, it is a proceeding in a proceeding and, therefore, the matter will be governed by the proviso to sub-section (i) of section 115 of the Code. The said proviso may be reproduced for ready reference as follows:-

> "Provided tht the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings;"

The said proviso makes it clear that before a court of revision entertains its revisional jurisdiction under section 115 of the Code, it would be necessary that the order which is impugned in the revision is such that if it had been passed in favour of the revisionist, then it would have been terminated the suit or other proceedings before the trial court. In the present case, we find that even if the order in question was passed in favour of the revisionist, it would not have been terminated the suit. In other words, even if the revision application is allowed by this Court, it would not terminate the civil suit before the trial court. Therefore, the text of the proviso has not been satisfied and, therefore, it would not be open to this court to exercise revisional jurisdiction. In that view of the matter and considering the decision of this Court in CRA No.863 of 2000, it would not be legally permissible for this Court to entertain this revision application. Therefore, without going into the merits of the case, on factual aspects, this revision application is required to be dismissed.

3. It is true that learned Advocate for the petitioners argued that the petitioners are likely to be dispossessed from the suit property and, therefore, this court should exercise revisional jurisdiction. However, in view of the aforesaid proviso to sub-section (i) of section 115 of the Code as amended by Amending Act of 1999, it would not be possible for this court to entertain this revision application.

4. For the foregoing reasons, this revision application is ordered to be dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

At this stage, on behalf of the learned Advocate for the petitioners it is stated that the petitioners would be required to file a petition under Article 227 of the Constitution of India. He, therefore, seeks permission to file such a petition. He also requests that the interim relief granted earlier may be extended for a further period of one week. So far as permission is concerned, I am of the opinion that no such permission is required. It may be open to the petitioners to file appropriate petition if they desire so. The interim relief granted by this court at the time of issuance of notice shall continue for a further period of one week.

16.8.2002 [D P Buch, J.]
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